



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

VALERIE ERVIN
COUNCILMEMBER
DISTRICT 5

Memorandum

Date: April 2, 2013

To: Councilmember Nancy Floreen, PHED Committee Chair

From: Councilmember Valerie Ervin *VE*

Re: Zoning Ordinance Rewrite

As you know, the last comprehensive revision to the zoning ordinance occurred in 1977. Since that time, zoning changes and our piecemeal zoning text amendment process, which is necessary to respond to community and development concerns, has created a fragmented document that guides our county's land use. With 123 zones, more than 1,200 pages, and over 400 land uses, the County Council requested a process that would create a zoning ordinance that is understandable, efficient, and rational. The goal was to create a readily usable document that property owners and other stakeholders could understand.

The Zoning Ordinance rewrite was included in the Planning Department's FY08 Work Plan. Part of this process included creating a Zoning Advisory Panel (ZAP), which is composed of 23 stakeholders who live in Montgomery County and whose job was to advise the Planning Board and its staff on this project. In 2009, the ZAP began meeting to integrate and consolidate more than 120 zones into 12 categories of zones with different development intensity allowed in each of these consolidated zones.

The general objectives included:

1. Shifting focus from greenfield to infill development;
2. Re-thinking planning and zoning framework;
3. Matching degree of regulations to degree of impact;
4. Improving quality of development; and
5. Incentivizing public benefits.

The drafting objectives included:

6. Simplifying and streamlining standards and process;
7. Matching land use to development patterns (changes should reflect the nature of future infill development objectives);
8. Providing easy access and use of code;

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9. Modernizing terminology and uses and consolidating to reduce duplication and obsolete elements; and
10. Creating efficient and effective implementation strategies.

Accomplishing all of these goals is extraordinarily ambitious, and I believe that the Planning Board has made significant progress. I also want to recognize the extremely hard work of those serving on the ZAP, Planning Department staff, and Planning Board members; however, many community and developer stakeholders have raised significant issues that I believe the Council should consider as we develop our strategy for reviewing the proposed new Zoning Ordinance and evaluate whether changes should be made all at the same time.

Issues for Review

A. First do no harm.

We should proceed with care, and focus on efforts designed to encourage the use of new opportunities, and be reticent to prescribe design results or detail specific methodology that may prevent progress or stifle creativity. There also should be clear assurances that development that is proper today, whether residential or non-residential, will continue to be legal and conforming, so that there is no injury to innocent bystanders.

Changes that may be characterized as form and format changes have the potential to confuse and to unintentionally mask substantive changes, thus creating fear and distrust of the entire process.

B. Priorities should focus on zones and land uses that need improvement versus those that are already working.

Many “old” zones in the existing code are working well, and we need time to evaluate how some of the “new” zones are working on the ground.

- The majority of agricultural and single-family residential have no significant potential for further development, so there are no compelling reasons to change the zones and the standards that apply to these areas.
- Before changing the rules in CBD zones, we should see how the new CR Zones work as they are applied to areas other than White Flint. The Planning Board, Planning Board staff, and Council just spent an extraordinary amount of time developing, and then refining, the CR Zones. Making changes now would be premature for many areas of the county that are just starting to develop under these new zones. We need to give the CR Zones a chance to demonstrate their success.
- In most cases, the existing C-1 and C-2 Zones are working well. Authorizing inclusion of other uses, such as residential, can be done by targeted text changes.

- Like the C-1 and C-2 Zones, the industrial zones are working well and are fairly well understood. Some of the industrial areas are also subject to overlay zones, which add another layer of complexity, if changes are adopted by uniform conversion instead of amending the master plans. In addition, some industrial zones, like I-3 and I-1 go to site plan review if a project is beyond specified height limits.

C. Recommendations need to be developed to accommodate interim uses.

While the Council's goal is to plan for the future, we also need to recognize that some development goals will take years to be feasible. In many cases, we must recognize and plan for incremental steps before full-scale redevelopment can realistically occur. We need to take into account existing economic conditions and market forces to provide some flexibility for properties to modernize, expand, and evolve before full-scale build out is possible in some areas of the county.

D. More focus needs to be placed on the history of the Council's prior zoning decisions, which are embodied in the existing Zoning Ordinance, and the county's land use planning culture.

Over the years, the Council has passed numerous zoning text amendments to accomplish specific results for residents and developers. In an effort to streamline the ordinance, some of this institutional knowledge has not been fully appreciated or incorporated. In some cases, recommendations made without historical context may result in adverse and unintended consequences. Compromises carefully crafted, sometimes over many years, may be lost in attempts to achieve a perfection of uniformity and simplification.

E. Regulatory structure should be consistent.

Currently, all development projects must comply with the master plan, zoning ordinance, and design guidelines. In addition, sometimes implementation guidelines are required in specific zones. In many cases, these sources of land use policies are not internally consistent. This poses a challenge for moving forward in an efficient manner, and creates the same kind of confusion that the Zoning Ordinance rewrite is intended to remedy.

F. The wholesale application of changes may be difficult.

The application of the zoning changes proposed in the Zoning Ordinance rewrite will also be a challenge. Implementing the myriad of changes through a district-wide sectional map amendment and/or voluminous text amendments will be extremely detail driven and time-consuming for the Council to review. The unidentified effects of some changes may fall through the cracks, if we aren't specifically evaluating the impacts on each master plan. Without evaluating the needs within each master plan, we may be faced with uniform conversions for each existing zone, thereby at the same time losing the fine grained analysis of our new zoning tools. This approach may result in trying to match

properties to a limited menu of zone conversion options, instead of applying the zone most appropriate for a specific location.

Conclusion

As the Planning Housing and Economic Development (PHED) Committee and County Council develops a plan for evaluating the many complicated changes proposed in the Zoning Ordinance rewrite, I recommend that we agree on a set of core values based on the end state of the effort we want to achieve, while establishing parameters based on the challenges detailed above. We should approach this review in a deliberate manner and not rush decisions that will have an impact on our county's future generations. We should communicate our intentions to the community and engage stakeholders across the county in this effort.

I believe that by investing the time to develop a strategic plan that keeps what works and reforms what doesn't, we can develop a coordinated approach to work with developers, public-private partners, community members, and other stakeholders to improve our county's planning and development process. I look forward to working with you and appreciate your leadership on this effort.

c: Councilmembers
Francoise Carrier, Planning Board Chair
Rose Krasnow, Interim Planning Director
Jeff Zyontz, Legislative Attorney
Marlene Michaelson, Senior Legislative Analyst